

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5900 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?-No.

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2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy
of the judgement?-No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil
Judge?-No.

BELURGHAT TRANSPORT CO.

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK for Petitioners
MR D.N. Patel, Assistant Government Pleader,
for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision: 25/11/98

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

The first petitioner is a registered firm, having

its main office at Calcutta. The petitioners received notice, calling upon them to pay profession tax. The individual partners also received notice. Challenging the notice, they filed appeal before the Assistant Commissioner for Professional Tax (Enforcement), Ahmedabad. The appeal preferred by the petitioners was partly allowed and the Assistant Commissioner was pleased to impose Rs.750/- by way of tax and Rs.220/- by way of penalty. The order of the Assistant Commissioner is challenged before us. Incidentally, they have also challenged the vires of the provisions contained in the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 and the Rules framed thereunder.

We heard the petitioners' counsel. The contention urged by the petitioners is that the petitioners have no business in the Gujarat State and the main office being in West Bengal, neither the firm nor the partners of the Partnership are liable to pay any amount by way of profession tax. It may be noted that the petitioner-firm has got Branch Office at Ahmedabad, Rajkot, Jetpur, Surat and Baroda. The petitioner-firm is engaged in transport business. It is admitted that their vehicles ply in Gujarat State and for this purpose, the Branch Offices are functioning. Therefore, the contention urged by the petitioners' counsel that they are not doing any business in Gujarat is not correct. The petitioners have alleged that they are paying profession tax in Mumbai and West Bengal and, therefore, they are not liable to pay the profession tax here. That contention is also not sustainable. The profession tax is collected on the basis of the business carried on in the State. Therefore, the Petitioners are paying profession tax at Mumbai for the business carried on there and in West Bengal for the respective business carried on in that State.

Another contention urged by the petitioners' counsel is that the partners of the firm are not to be held liable to pay any profession tax. This contention also cannot be accepted as the partnership firm, by itself, is not a legal entity. Each member of the firm has to pay jointly and severally and the authority can legally proceed against the partners. The petitioners have challenged the constitutionality of Entry 3(IX) of Schedule I of the Act and the Rules framed thereunder, but no specific challenge, as such, is made in this Special Civil Application. The petitioners have also not made out any ground to show that the provisions contained in the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 are violative of the provisions

contained in the Constitution. We find no reason to interfere with the order passed by the 2nd respondent. The Special Civil Application is accordingly dismissed. Rule is discharged. No costs.

(apj)